Review of Recent Juvenile Cases (2011)

by
The Honorable Pat Garza
Associate Judge
386th District Court
San Antonio, Texas

Merely filing motion for new trial is not sufficient evidence of its presentment to trial court.[Adams v. State](11-4-5B)

On November 7, 2011, the Dallas Court of Appeals held that to satisfy the presentment requirement for his motion for new trial (and preserve error), the presentment must be apparent from the record and may be shown by such proof as the judge's signature or notation on the motion or proposed order, or an entry on the docket sheet showing the motion was brought to the trial court's attention or a hearing was set.

¶ 11-4-5B. **Adams v. State**, No. 05-10-01056-CR, --- S.W.3d ----, 2011 WL 5311099 (Tex.App.-Dallas, 11/07/11).

Facts: In 2005, a juvenile court found that appellant engaged in delinquent conduct for committing the offense of aggravated sexual assault of a child. See Tex. Fam.Code Ann. § 51.03(a)(1) (West Supp.2010) (delinquent conduct); Tex. Penal Code Ann. § 22.021(a)(1)(B), (2)(B) (West 2011). The juvenile court sentenced appellant to ten years' confinement with the Texas Youth Commission, probated for ten years, and also deferred its decision on whether appellant would be required to register as a sex offender while he participated in a sex offender treatment program. See Tex.Code Crim. Proc. Ann. art. 62.352(b)(1) (West 2006); see also id. art. 62.001(5)(A) (requiring sex offender registration for conviction based on aggravated sexual assault).

When appellant turned eighteen in 2008, the district court accepted transfer of appellant's case from the juvenile court and placed him on adult community supervision for the remainder of his ten-year term. See Tex. Fam.Code Ann. § 54.051 (West 2006). As part of his probation, appellant was subject to numerous terms and conditions, including the requirement that he "participate fully in [sex offender] counseling, comply with the rules and regulations of the approved agency, ... and continue in treatment/counseling for sex offenders until released by the Court." According to the conditions of his community supervision, appellant was instructed to report to the "Sex Offender Supervision Unit" to schedule an appointment.

The State filed a motion to revoke appellant's probation in June 2009, alleging appellant violated four conditions of his probation. The State subsequently withdrew its motion, and appellant was continued on probation. The trial court ordered that appellant be released to the staff of the Wayback House for treatment and also modified the conditions of appellant's probation to include a requirement that appellant faithfully comply with all rules, regulations, and treatment programs at the Wayback House. One year later, the State filed a second motion to revoke. Among the alleged violations included in the motion was appellant's "unsuccessful[ ] discharge from [the] Wayback House."

Appellant pleaded true to the State's allegations at a hearing on the State's second motion to revoke. During the hearing, the trial court heard testimony from Mark Brandon, appellant's case manager at the Wayback House, and from appellant. Brandon described the Wayback House as a facility that provided general supervision and assistance with the requirements of probation and explained the "majority of the residents that [had] been referred there" during his tenure were registered sex offenders. Brandon testified that appellant had made no progress in his treatment, did not take his probation seriously, and had not demonstrated an ability to follow the rules. He said appellant had committed at least fourteen infractions during his time at the Wayback House and described specific examples of appellant's disregard for authority; Brandon stated he could "see no justification for wanting to continue [appellant's probation] by the basis of his actions." Brandon also testified that appellant was untrustworthy, appellant's "arrogance [was] just totally irrational," and that appellant had a "total disregard for any authority figure whatsoever."

Appellant admitted he was a sex offender, that he pleaded guilty to raping his young nieces, and that he had thirteen child victims since he was fourteen years old. He also admitted he committed the various infractions described by Brandon and that he received an unsuccessful discharge from the Wayback House. Yet he hoped to continue his probation, explaining that he "let [his] pride get in the way" and had "[a] lot of learning" to do.

The trial court accepted appellant's plea of true, found he violated the terms and conditions of his probation as alleged by the State, and revoked appellant's probation. The trial court assessed punishment at ten years' imprisonment. The trial court also set aside the prior order excusing appellant from sex offender registration and ordered appellant to register to as a sex offender under Texas Code of Criminal Procedure article 62.352(c) because appellant's "treatment was terminated." See Tex.Code Crim. Proc. Ann. art. 62.352(c).

Held: Affirmed

Opinion: In his second point of error, appellant contends the trial court abused its discretion by sentencing him to ten years' imprisonment because such punishment violates the objectives of the penal code and is not necessary to prevent the likely recurrence of appellant's criminal behavior. Specifically, appellant asserts a sentence of imprisonment does not meet the penal code's goal of rehabilitation because there is nothing in the record to suggest that he could not be further rehabilitated. He argues that at the time he committed the infractions at the Wayback House, he was a young adult "who needed a different type of rehabilitation than what the Wayback House provided." He maintains the sentence "does not recognize differences in rehabilitative possibilities among individual defendants" and that he was a "good candidate" for continued rehabilitation through treatment with a different caseworker "more attuned to [his] different rehabilitative possibilities."

Appellant did not complain about his sentence at the time it was assessed. See Tex.R.App. P. 33.1(a)(1)(A) (requiring timely and specific request, objection, or motion to trial court as prerequisite to presenting appellate complaint); Castaneda v. State, 135 S.W.3d 719, 723 (Tex.App.--Dallas 2003, no pet.). And although appellant raised these complaints in his motion for new trial, there is nothing in the record showing appellant brought his motion to the trial court's attention. See Tex.R.App. P. 21.6; Carranza v. State, 960 S.W.2d 76, 78-79 (Tex.Crim.App.1998) (complaint raised in motion for new trial not preserved unless motion is presented to trial court). The rules of appellate procedure require a defendant to "present" a motion for new trial to the trial court within specified time limits. Tex.R.App. P. 21.6. To satisfy the presentment requirement, the defendant must actually deliver the motion for new trial to the trial court or otherwise bring the motion to the attention or actual notice of the trial court. See Carranza, 960 S.W.2d at 78-79 (merely filing motion for new trial is not sufficient evidence of its presentment to trial court); see also Gardner v. State, 306 S.W.3d 274, 305 (Tex.Crim.App.2009). Presentment must be apparent from the record

and may be shown by such proof as the judge's signature or notation on the motion or proposed order, or an entry on the docket sheet showing the motion was brought to the trial court's attention or a hearing was set. See Gardner, 306 S.W.3d at 305; see also Carranza, 960 S.W.2d at 79-80 (providing non-exhaustive list as to how presentment requirement may be fulfilled).

Here, appellant's motion for new trial includes a proposed form order that is blank and bears no notations by the court. The trial court's docket sheet contains no reference to the motion for new trial, and the record otherwise contains no evidence of a hearing, signature or notation by the judge, or any indication the trial court had actual knowledge of the motion. Therefore, because appellant did not object to his sentence when it was imposed or present his motion for new trial to the trial court, we conclude appellant has not preserved this point of error for appellate review. See Castaneda, 135 S.W.3d at 723; Carranza, 960 S.W.2d at 79.

Appellant maintains that under certain circumstances, issues involving "fundamental error in punishment" can be raised for the first time on appeal. Despite this assertion, appellant does not claim any fundamental error exists in this case. To the contrary, appellant concedes the trial court assessed punishment within the statutory range for his offense. As a general rule, a sentence that is assessed within the punishment range for the offense is neither cruel, unusual, nor excessive, and complies with the objectives of the Texas Penal Code. Castaneda, 135 S.W.3d at 723; Carpenter v. State, 783 S.W.2d 232, 232-33 (Tex.App.--Dallas 1989, no pet.).

Conclusion: On this record, we conclude the trial court did not abuse its discretion in sentencing appellant to prison in this case. See Jackson v. State, 680 S.W.2d 809, 814 (Tex.Crim.App.1984) (stating general rule that sentence will not be disturbed on appeal if within proper range of punishment). Accordingly, we overrule appellant's second point of error.